

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF NORTH CAROLINA
3 (Bryson City Division)
4

5 -----X
6 UNITED STATES OF AMERICA, :
7 Plaintiff :
8 :
9 vs :Criminal Action:2:12-CR-33(5)
10 KRISTY FRANKS, :
11 Defendant. :
12 -----X

11 Tuesday, January 22, 2013
12 Bryson City, North Carolina

13 The above-entitled action came on for an Entry of
14 Plea and Sentencing Hearing Proceeding before the
15 HONORABLE DENNIS L. HOWELL, United States Magistrate
16 Judge, in Courtroom 50, commencing at 9:24 a.m.

16 **APPEARANCES:**

17 On behalf of the Government:
18 RICHARD EDWARDS, Esquire
19 Office of the United States Attorney
20 100 Otis Street
21 Asheville, North Carolina 28801

22 On behalf of the Defendant:
23 FRANK A. ABRAMS, Esquire
24 19 North Oak Forest Drive
25 Asheville, North Carolina 28803

24 Tracy Rae Dunlap, RMR, CRR 828.771.7217
25 Official Court Reporter

I N D E X

EXAMINATION (BY THE COURT)

Kristy Franks.....3

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Reporter's Certificate19

1 P R O C E E D I N G S

2 THE COURT: I'm now going to call the case of
3 United States of America versus Christy Franks which is
4 file 2:12-CR-33-5 and which is on the calendar for the
5 purpose of a Rule 11 proceeding with Ms. Franks.

6 Ms. Franks, I am advised that you have filed a
7 written plea agreement with the Government in regard to
8 the charges that are pending against you in this case.
9 As a result, I am required by the Federal Rules of
10 Criminal Procedure to inquire and advise you concerning
11 that agreement. I'm going to have to ask you some
12 questions, and you're going to be required to personally
13 respond to those questions under oath. I'm going to need
14 for you to stand up, please, ma'am. Put your left hand
15 on the Bible there in front of you. Raise your right
16 hand and take the oath to tell the truth from the Clerk.

17 (Witness duly sworn at 9:25 a.m.)

18 EXAMINATION

19 BY THE COURT:

20 Q. I'm going to let you sit down, Ms. Franks. We've
21 got several questions to go over, and I want you to be
22 comfortable. Ms. Franks, do you understand that you're
23 now under oath and that you are required to give truthful
24 answers to the questions I am about to ask you?

25 A. Yes.

1 Q. Do you understand that if you give false
2 information under oath that you may be prosecuted for
3 perjury or false statement?

4 A. Yes.

5 Q. Are you able to hear and understand my questions
6 to you?

7 A. Yes.

8 Q. Do you understand that you have the right to have
9 a United States District Judge conduct this proceeding?

10 A. Yes.

11 Q. Recognizing your right to proceed before a
12 District Judge, do you expressly consent to proceed in
13 this court before a United States Magistrate Judge?

14 A. Yes.

15 Q. Ms. Franks, there's been presented to me a
16 document entitled "Sealed Addendum to Entry and
17 Acceptance of Guilty Plea" which provides information to
18 me concerning your name, age, education, use of drugs or
19 alcohol, and medical information. Did you provide the
20 information for the completion of that document and did
21 you sign that document?

22 A. Yes.

23 Q. Is all the information that you provided in that
24 document true and accurate?

25 A. Yes.

1 Q. Is your mind clear, and do you understand that
2 you're here today to enter a guilty plea that cannot
3 later be withdrawn?

4 A. Yes.

5 Q. Have you and your attorney reviewed the Bill of
6 Indictment, and have you and he reviewed the plea
7 agreement in regard to this case?

8 A. Yes.

9 Q. From my examination of the plea agreement I am
10 advised that you're pleading guilty to the single count
11 as contained in the Bill of Indictment. Is that correct?

12 A. Yes.

13 Q. In the Bill of Indictment, it is alleged as
14 follows: The Grand Jury charges from in or around April
15 of 2012, and continuing until on or about August 8th 2012
16 in Jackson, Buncombe and Haywood counties, which are
17 within the Western District of North Carolina and
18 elsewhere, Glen Ashe, Kenneth Ashe, Leslie Blakely,
19 Lester Arthur Davis, Kristy Franks, and Cornelius Mills
20 did knowingly and intentionally combine, conspire,
21 confederate and agree with each other and others, both
22 known and unknown to the Grand Jury, to possess with
23 intent to distribute a quantity of cocaine base, commonly
24 known as crack cocaine, a Schedule II controlled
25 substance. It is alleged that said conspiracy involved

1 at least 280 grams of a mixture or substance containing a
2 detectable amount of cocaine base, in violation of Title
3 21 United States Code, sections 8481(a)(1) and 846. Are
4 you pleading guilty to that offense?

5 A. Yes.

6 Q. Would you like for me to go over that question
7 with you again, ma'am?

8 A. No.

9 MR. ABRAMS: Your Honor, if I may. There was an
10 agreement with the plea remitting to amounts which have
11 -- has a five year minimum mandatory attached to it. And
12 as I explained to Ms. Franks, she is pleading to Count
13 One of the indictment and those are the penalties as
14 initially put forth in the indictment.

15 BY THE COURT:

16 Q. All right. Ms. Franks, what Mr. Abrams has
17 advised me is exactly correct in this case. When I do
18 one of these plea proceedings I have to advise you about
19 what's charged in the Bill of Indictment. There does
20 appear to be in the plea agreement an agreement that what
21 the amount of crack cocaine that was known or reasonably
22 foreseeable to you was only 72.3 grams, but I've got to
23 tell you about the maximum.

24 A. Okay.

25 Q. All right. The law requires that I advise you of

1 the essential elements of such an offense. Before I
2 advise you of those elements I am going to read to you
3 the statute that it is alleged that you have violated.
4 21 United States Code, Section 8481(a)(1) reads: (a)
5 Unlawful Acts. Except as authorized by this subchapter,
6 it shall be unlawful for any person knowingly or
7 intentionally, (1) To manufacture, distribute or dispense
8 or possess with intent to manufacture, distribute or
9 dispense a controlled substance. And 21 United States
10 Code, Section 846 reads: Any person who attempts or
11 conspires to commit any offense defined in this
12 subchapter shall be subject to the same penalties as
13 those prescribed for the offense, the commission of which
14 was the object of the attempt or conspiracy.

15 The elements of the offense described in those two
16 statutes and in the sole count of the Bill of Indictment
17 are as follows. (1) That the conspiracy described in
18 the Bill of Indictment, that is an agreement with others
19 to violate the Federal Drug Act, was willfully formed and
20 was existing at the time alleged in the Bill of
21 Indictment; (2) That you willfully became a member of
22 that conspiracy; (3) That the object of that conspiracy
23 was to violate the Federal Drug Act by possessing with
24 intent to distribute a quantity of cocaine base commonly
25 known as crack cocaine, a Schedule II controlled

1 substance. And (4) That you did such acts willingly,
2 intentionally and unlawfully.

3 Do you understand each element of the offense
4 charged as I have explained them to you?

5 A. Yes.

6 Q. Do you understand that upon a plea of guilty the
7 Government would be required to prove each element of the
8 offense charged beyond a reasonable doubt?

9 A. Yes.

10 Q. Do you understand that the Government would be
11 required to prove that the unlawful acts were committed
12 knowingly, willfully, intentionally and unlawfully?

13 A. Yes.

14 Q. I am also required by law to advise you concerning
15 the maximum and any minimum penalties prescribed by law
16 for such an offense. Based upon the amount of substance
17 alleged in the Bill of Indictment, the maximum possible
18 penalty for this offense is a term of imprisonment which
19 may not be less than ten years or more than Life
20 imprisonment, a fine not to exceed the sum of \$10
21 million, or both; a term of supervised release of at
22 least five years, and a \$100 special assessment.

23 However, if, at the time this offense was
24 committed, you had a prior conviction for a felony drug
25 offense which had become final, then you could be

1 sentenced to a term of imprisonment which may not be less
2 than 20 years or not more than life imprisonment, a fine
3 not to exceed the sum of \$20 million, or both a term of
4 supervised release of at least ten years and a \$100
5 special assessment. If at the time this offense was
6 committed you had two or more prior convictions for a
7 felony drug offense which had become final, then you
8 could be sentenced to a mandatory term of Life
9 imprisonment without release, a fine not to exceed the
10 sum of \$20 million, or both, and a \$100 special
11 assessment.

12 Do you fully understand the charges against you as
13 alleged in Count One of the Bill of Indictment, including
14 those potential maximum and potential minimum penalties?

15 A. Yes.

16 THE COURT: Mr. Edwards, has the Government filed
17 or does the Government contemplate filing any notices
18 under 21 United States Code, Section 851 concerning any
19 prior conviction of Ms. Franks?

20 MR. EDWARDS: No, sir. My understanding is we
21 have not and do not anticipate doing so.

22 THE COURT: Thank you very much, sir.

23 **FURTHER EXAMINATION**

24 BY THE COURT:

25 Q. Ms. Franks, do you understand that, if you are

1 not a citizen of the United States, your guilty plea may
2 result in your deportation from this country, your
3 exclusion for admission to this country, or the denial of
4 your naturalization under federal law?

5 A. Yes.

6 Q. Ms. Franks, if the Court imposes an active term of
7 imprisonment of more than one year, the Court is required
8 also to order a term of what is called "supervised
9 release." A term of supervised release may be ordered in
10 other circumstances. This means that after a defendant
11 is released from prison there are certain terms and
12 conditions they will be required to follow. The length
13 of supervised release usually ranges from one to five
14 years but may be more or less than that for certain
15 offenses. Do you understand the terms "supervised
16 release" as I have explained them to you?

17 A. Yes.

18 Q. Do you understand that if you violate the terms
19 and conditions of supervised release you could be
20 returned to prison for an additional period of time?

21 A. Yes.

22 Q. Do you understand parole has been abolished in the
23 federal system and that if you're sentenced to a term of
24 imprisonment you will not be released on parole?

25 A. Yes.

1 Q. Have you and Mr. Abrams discussed how the
2 sentencing guidelines may apply in your case?

3 A. Yes.

4 Q. Do you believe you understand how these guidelines
5 may apply to you?

6 A. Yes.

7 Q. Do you understand that the Court will not be bound
8 by the sentencing guidelines but, nonetheless, must
9 consult those guidelines and take them into account when
10 sentencing?

11 A. Yes.

12 Q. Do you understand that the sentence the Court will
13 impose will be within the statutory limits and in the
14 Court's sound discretion and could be greater or less
15 than the sentences provided for by the guidelines?

16 A. Yes.

17 Q. Do you understand that the Court will follow the
18 procedural components of the guidelines system, which
19 means that the probation office will prepare a
20 presentence report which contains guidelines
21 calculations? And both you and the Government will have
22 an opportunity to object to any alleged deficiencies in
23 the report.

24 A. Yes.

25 Q. Do you understand that in some circumstances you

1 may receive a sentence that is different. That is,
2 either higher or lower than that called for by the
3 guidelines.

4 A. Yes.

5 Q. Do you understand that if the sentence is more
6 severe than you expect, or the Court does not accept the
7 Government's sentencing recommendation, you would still
8 will be bound by your plea and have no right to withdraw
9 the plea of guilty?

10 A. Yes.

11 Q. Do you understand that the Court has the
12 discretion in appropriate circumstances to order you to
13 make restitution to any victim of the offense? The Court
14 may also, in the appropriate circumstance, require you to
15 pay the cost of your confinement in prison or cost of
16 supervision or special investigative costs, or all of
17 these costs. The Court may also require you to forfeit
18 property involved in the offense. Do you understand
19 these requirements as I have explained them to you?

20 A. Yes.

21 Q. Do you understand that you have a right to plead
22 not guilty, to have a speedy trial before a judge and
23 jury, to summons witnesses to testify in your behalf, and
24 to confront witnesses against you?

25 A. Yes.

1 Q. Do you understand that if you exercise your right
2 to trial you would be entitled to the assistance of an
3 attorney, that you would not be required to testify, that
4 you would be presumed innocent, and the burden would be
5 on the Government to prove your guilt beyond a reasonable
6 doubt? Do you understand all of these rights?

7 A. Yes.

8 Q. Do you understand that by entering a plea of
9 guilty you forfeit and waive or give up your right to
10 plead not guilty to a trial by a jury and at that trial
11 the right to assistance of counsel, the right to confront
12 and cross-examine witnesses against you, and the right
13 against compelled self-incrimination or any other rights
14 associated with a jury trial?

15 Do you understand that by entering this plea of
16 guilty you are waiving or giving up all of these rights
17 and a trial will not be held?

18 If your plea of guilty is accepted there will be
19 one more hearing where the District Court will determine
20 (a) whether there is a factual basis for your plea and
21 (b) what sentence to impose.

22 Do you understand all of these things?

23 A. Yes.

24 Q. Are you in fact guilty of the count in the Bill of
25 Indictment to which you have come to court today to plead

1 guilty? That is, did you commit the acts described in
2 the single count of the Bill of Indictment?

3 A. Yes.

4 Q. Is your plea of guilty voluntary?

5 A. Yes.

6 Q. Other than the promises contained in the written
7 plea agreement, has anyone made any promise to you or
8 threatened you in any way to cause you to enter this plea
9 of guilty against your wishes?

10 A. No.

11 Q. Do you enter this plea of guilty of your own free
12 will fully understanding what you're doing?

13 A. Yes.

14 Q. Do you understand that entering a plea of guilty
15 to a felony charge may deprive you, at least for a time,
16 of certain civil rights, such as the right to vote, hold
17 a public office, serve on a jury, and possess a firearm?

18 A. Yes.

19 Q. Is your willingness to plead guilty the result of
20 prior discussions between your attorney, Mr. Abrams, and
21 he having discussions with the attorneys for the
22 Government?

23 A. Yes.

24 Q. As a result, have you and the Government entered
25 into a plea agreement in regard to this case?

1 A. Yes.

2 THE COURT: Mr. Edwards, if you would, please
3 present the terms of that agreement.

4 MR. EDWARDS: Yes, sir. The agreement is all in
5 writing and was signed and submitted to the Court on
6 January 10th of this year. The major terms are that the
7 Defendant enters her plea of guilty to the single count
8 of the indictment. As the Court's already mentioned, the
9 parties agree that the amount of cocaine base, or crack,
10 that was reasonably foreseeable to the Defendant was 72.3
11 grams. The parties also agree that either party may seek
12 a departure or variance from the applicable guideline
13 range.

14 The other major term I'd like to highlight is the
15 standard term in paragraph 18 on page four that, in
16 exchange for the concessions made by the Government, the
17 Defendant waives all rights to contest the conviction
18 except for a claim of ineffective assistance of counsel
19 by her attorney, or prosecutorial misconduct by the
20 Government. Thank you.

21 THE COURT: Thank you very much, Mr. Edwards.

22 **FURTHER EXAMINATION**

23 BY THE COURT:

24 Q. Ms. Franks, do you understand and agree with the
25 terms of the plea agreement as they've just been

1 explained to you by Mr. Edwards?

2 A. Yes.

3 Q. I believe your signature is on the plea agreement.

4 Is that correct, ma'am?

5 A. Yes.

6 Q. Have you discussed your right to appeal with
7 Mr. Abrams, and do you understand that the plea
8 agreement in this case provides that you may not appeal
9 your conviction or sentence or contest the same in a
10 post-conviction proceeding unless it is on the grounds
11 of, one, prosecutorial misconduct or, two, ineffective
12 assistance of counsel?

13 A. Yes.

14 Q. Do you knowingly and willingly accept these
15 limitations on your right to appeal and to file post-
16 conviction proceedings?

17 A. Yes.

18 Q. Mr. Abrams, have you reviewed each of the terms
19 of the plea agreement with Ms. Franks, and are you
20 satisfied that she understands those terms?

21 MR. ABRAMS: Yes, Your Honor.

22 **FURTHER EXAMINATION**

23 BY THE COURT:

24 Q. Ms. Franks, have you had ample time to discuss
25 with Mr. Abrams any possible defenses that you may have

1 to these charges, and have you told Mr. Abrams
2 everything that you want him as your attorney to know
3 about this case?

4 A. Yes.

5 Q. Are you entirely satisfied with the services of
6 your attorney?

7 A. Yes.

8 Q. Are you telling me that you know and understand
9 fully what you're doing, that you've heard and understood
10 all parts of this proceeding, and that you want me to
11 accept your plea of guilty?

12 A. Yes.

13 Q. Do you have any questions, statements or comments
14 that you would like to make about anything that has been
15 brought up or discussed in the course of this proceeding?
16 If you do I'll be happy to try to answer your questions
17 or I'll be glad to hear any statements or comments that
18 you might wish to make, ma'am.

19 A. No.

20 Q. Ms. Franks, the majority of the questions that I
21 have asked you are contained in a document that is
22 entitled "Rule 11 Inquiry and Order of Acceptance of
23 Plea." As I was asking you the questions that are
24 contained within that document I was attempting to
25 accurately record your answers, but I will need for you

1 and Mr. Abrams to go over this document and make sure
2 that I have indeed accurately recorded your answers.
3 More importantly, I need for you and Mr. Abrams to make
4 sure that the answers that you gave me to those questions
5 were truthful. If after review you and he find that the
6 answers to the questions are both accurate and truthful,
7 then I will need for you and Mr. Abrams to sign this
8 document and hand it back to me.

9 Officer, if you would, please, provide the Rule 11
10 document to Ms. Abrams and to Ms. Franks.

11 Based upon the representations and answers given
12 by the Defendant and her attorney in the foregoing Rule
13 11 proceeding, I find that the Defendant's plea is
14 knowingly and voluntarily made and that the Defendant
15 understands the charges, the potential penalties and the
16 consequences of her plea, and her plea of guilty is
17 hereby accepted.

18 Is there anything further, Mr. Edwards that you
19 can think of that we need to do in regard to Ms. Franks'
20 case?

21 MR. EDWARDS: No, sir.

22 THE COURT: How about for the Defendant?

23 MR. ABRAMS: Nothing, Your Honor.

24 THE COURT: All right. That will complete all
25 proceedings today in regard to Ms. Franks.

1 Good luck to you, Ms. Franks.

2 (Off the record at 9:43 a.m.)

3
4
5 **CERTIFICATE**

6 I, Tracy Rae Dunlap, RMR, CRR, an Official Court
7 Reporter for the United States District Court for the
8 Western District of North Carolina, do hereby certify
9 that I transcribed from audio recording to the best of my
ability, by machine shorthand, the proceedings had in the
case of UNITED STATES OF AMERICA versus KRISTY FRANKS,
Criminal Case 2:12-CR-33(5) on January 22, 2013.

10 In witness whereof, I have hereto subscribed my
11 name, this 28th day of October 2013.

12 __/S/__Tracy Rae Dunlap__
13 TRACY RAE DUNLAP, RMR, CRR
14 OFFICIAL COURT REPORTER
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